

MEMORANDUM OF AGREEMENT
BETWEEN
THE GOVERNMENT OF PUERTO RICO
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

I. General

This Memorandum of Agreement (hereafter "Agreement") establishes policies, responsibilities and procedures pursuant to 40 CFR 271.8 relating to the cooperative administration of the laws enacted by the United States of America under Subtitle C of the Resource Conservation and Recovery Act of 1976 Public Law 94-580, 42 USC Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 and the laws of Puerto Rico to protect human health and the environment by regulating the generation, transportation, treatment, storage, and disposal of hazardous wastes.

This Agreement is entered into by the Chairman of the Puerto Rico Environmental Quality Board (hereafter "Chairman", "Commonwealth" or "PREQB"), the lead agency for the Puerto Rico Program (as designated by the Commonwealth of Puerto Rico pursuant to 40 CFR 123.124(b)), and the Regional Administrator, EPA, Region II, (hereafter "Regional Administrator" or "EPA").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA, or the Commonwealth's authority to regulate waste streams or activities within the scope of the Commonwealth's program.

The parties will review this Agreement jointly at least once a year (and at other times as appropriate) during preparation of the annual EQB Grant Work Program (hereafter "PREQB Work Program"), in connection with grant funding under Section 3011 of RCRA.

This Agreement will be amended and re-executed by the parties for final authorization.

This Agreement may be modified upon the initiative of either party in order to ensure consistency with the PREQB program modifications or for any other purpose mutually agreed upon. Any revisions or modifications must be in writing and must be signed by the Chairman and the Regional Administrator.

Unless otherwise stipulated, this Agreement, and any subsequent modifications made, will take effect immediately upon being signed by the Chairman and the Regional Administrator.

II. Authority and Responsibility

A. Policy Statement

Nothing in this MOA shall be interpreted as to limit the Commonwealth authority under the Environmental Public Policy Act (12LPRA Sec 1121 et seq.) and the Regulations for the Control of Hazardous and Non-Hazardous Solid Wastes as amended.

EPA has the authority to enter into this MOA pursuant to Section 3011 of RCRA for the purpose of funding elements of the hazardous waste management program under RCRA. Because the Commonwealth has not yet received final authorization, but anticipates receiving final authorization of its program in 1987, this MOA is entered into between EPA and the Commonwealth. The Agreement between EPA and the Commonwealth consists of this MOA and the annual grant work program negotiated between EPA and the PREQB pursuant to Section 3011 of RCRA.

The Commonwealth of Puerto Rico conducts a hazardous waste management program which is similar to the Federal hazardous waste management program under Subtitle C of RCRA. In addition, the Commonwealth has applied for authorization of its program under Section 3006(b) of RCRA and in accordance with 40 CFR Part 271, Subpart A.

The Federal hazardous waste management program is in effect in Puerto Rico and will remain in effect unless and until the Commonwealth receives final authorization of its hazardous waste management program.

It is understood that EPA retains full and ultimate responsibility for the administration and enforcement of the Federal hazardous waste management program in Puerto Rico and that nothing in this MOA or the annual grant work program shall be construed to limit EPA's authority under RCRA. It is further understood that PREQB's participation in this MOA is intended to maximize the expeditious and efficient implementation of RCRA and to speed Puerto Rico's receipt of authorization.

The Chairman shall administer the hazardous waste management program coinciding with Phase I of the Federal program consistent with the PREQB/EPA Enforcement Agreement, Program Reversion Strategy and provisions of other agreements, RCRA, current Federal policies and regulations, and any separate working agreements which shall be entered into with the Regional Administrator as necessary or desirable for the full administration and enforcement of the Federal program.

B. Information Sharing

1. EPA

EPA will provide to the Chairman or his designee an updated computer printout of the information submitted to EPA on EPA Form Number 8700-12. Such notification information will include EPA identification numbers and will consist of the information submitted by hazardous waste generators and transporters and by owners and operators of hazardous waste treatment, storage and disposal facilities (hereafter "TSDFs"). The updated computer printout shall be submitted to the Chairman or his designee within 30 days¹ of the effective date of this Agreement.

EPA agrees to assign identification numbers upon receipt of notification forms, for all new generators, transporters and TSDFs, regardless of whether an identification number is required by Federal statute or regulation. EPA will provide the Chairman's designee, within 30 days of assignment of EPA identification numbers, copies of forms submitted by persons located in the state who file such forms after date of Agreement.

EPA will transfer to the Chairman or his designee copies of TSDFs permit applications together with copies of any pertinent file information as such information is necessary for Puerto Rico to implement its hazardous waste program.

EPA agrees to provide to the Chairman or his designee an updated computer printout of information contained in the Part A permit applications submitted to EPA by owners and operators of TSDFs in Puerto Rico. Said printout will be submitted to the Chairman or his designee within 30 days of this Agreement.

EPA will assume sole responsibility for hazardous waste delisting petitions. EPA agrees to provide the Chairman or

¹ In computing any period of time prescribed by the Agreement, the day on which the designated period of time begins shall not be included. However, the last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday. In that case, the period will extend until the end of the next non-holiday weekday. When the period of time is less than seven days, intermediate Saturdays, Sundays or legal holidays shall be excluded in the computation.

his designee with an opportunity to comment on such Federal delisting petitions prior to EPA making a determination to grant (temporarily or finally) or deny the petition. Puerto Rico's comments received by EPA will be maintained in the public docket and will be available for public inspection and copying during normal business hours. Copies of EPA's decision on any Federal delisting petition will be forwarded to the Chairman or his designee within 14 days of the Agency's decision.

The PREQB agrees to notify the Regional Administrator or his designee of all delisting petitions received within 14 days of the PREQB's receipt of such petitions. EPA agrees to provide assistance to the PREQB (as resources allow) with respect to delisting actions taken by the PREQB for the purpose of Commonwealth regulations. On receipt of Commonwealth draft delisting packages (e.g., petitions, supplements to petitions and Commonwealth decisions on petitions), EPA will review the draft package and notify the Commonwealth in writing of its agreement or disagreement (including pertinent reasons) with the PREQB's draft decision.

The PREQB agrees to provide EPA with copies of all its final decisions on such delisting petitions within 14 days of the date that such final decisions are made.

EPA will make available to the Chairman, other information as requested which PREQB needs to implement their program.

Unless otherwise agreed upon, all above information will be forwarded to:

Director
Land Pollution Control Area
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910-1488

The above information will be provided subject to the terms of 40 CFR which implements the Trade Secrets Act, 18 USC 1905.

2. Puerto Rico Environmental Quality Board

The PREQB agrees to submit to the Regional Administrator, the following documents, reports, and other information:

1. Compliance Monitoring and Enforcement Logs.

2. Summary of changes in hazardous waste handler's names, ownership, contact person, phone, mailing address and waste codes.
3. Summary of PREQB Facility Closure Activities.
4. Facility Status Sheet.
5. Batch Transmittal Form.

Prior to making any changes in handler status, PREQB will provide EPA with its recommended change and the documentation it is based on. EPA will have 15 calendar days to provide comments to PREQB.

Any other reports, documents or information necessary for EPA to carry out its responsibilities.

Unless otherwise agreed upon, the above information will be sent to:

Chief, Solid Waste Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region II - 26 Federal Plaza
New York, New York 10278

PREQB will rely upon EPA's currently existing service of assigning identification numbers to new generators, transporters, and hazardous waste management facilities.

PREQB agrees to actively use the Region II Hazardous Waste Data Management System software for those components which are not supported by its own Automated Data Processing system in order to facilitate interagency exchange of routine information (e.g., status of enforcement actions, facility permits, number of RCRA notifiers).

3. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the party(ies) to this Agreement of the existence of such situation.

Director, Land Pollution Control
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910-1488
(809) 722-0439

Director, Hazardous Waste Bureau
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910-1488
(809) 722-0000

Hazardous Waste Program Coordinator
Caribbean Field Office
U.S. Environmental Protection Agency
P.O. Box 792
San Juan, Puerto Rico 00902-0792
(809) 725-7825

Chief, Solid Waste Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region II - 26 Federal Plaza
New York, New York 10278
(212) 264-0505

If, because of an emergency situation, an EPA ID Number needs to be assigned to move hazardous wastes, the generator may obtain an emergency EPA ID Number by calling (212) 264-9880 during working days 8 a.m.-4 p.m., and by calling (201) 548-8730 all other times.

To activate State/Federal emergency response to spill incidents, the following hotline numbers should be called: EQB: (809) 725-8992; and EPA: (809) 725-7825.

4. Confidentiality

All of the information EPA transfers to the PREQB will be provided subject to the terms of 40 CFR Part 2.

Any information obtained or used in the administration of the EQB program shall be available to EPA without

restriction. If information has been submitted to the PREQB under a claim of confidentiality, the EQB must inform EPA of such claim. EPA will treat all information submitted to it with a claim of confidentiality in accordance with the procedures of 40 CFR Part 2.

5. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from the PREQB. The PREQB agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the PREQB is unable to provide the information or if it is necessary to supplement the PREQB information, EPA may conduct a special survey or perform information collection site visits after notifying the PREQB. Except in cases of an emergency, the EPA will normally notify the EQB at least seven days prior to an EPA site visit. EPA will share with the PREQB any national reports developed by EPA as a result of such information collection.

III. EPA Overview of State Activities

EPA shall oversee and evaluate the PREQB's performance of functions described in this MOA on a continuing basis to assure that such performance is consistent with this MOA, the Annual Grant Workplan, PREQB/EPA Enforcement Agreement, Program Reversion Strategy and all applicable requirements embodied in current Federal policies, regulations, and laws. This evaluation generally will be accomplished through the following activities:

1. EPA review of all reports and submissions required by this MOA and the annual grant work program, applicable Federal policies, regulations and laws.
2. EPA on-site review of PREQB's performance in accordance with protocols and schedules established for program evaluations with commitments and performance levels made in the annual grant work program and PREQB/EPA Enforcement Agreement with performance levels in the "Interim National Criteria for Quality RCRA Program" of May 15, 1984. EPA reserves the right to conduct unannounced site visits to review performance of PREQB activities.

3. The Regional Administrator may also consider as part of this regular assessment, written comments about the PREQB's program administration and enforcement that are received from regulated persons, the public, and Federal, Commonwealth and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the PREQB within 30 days of their receipt. The PREQB will be provided with 30 days from receipt of the copies of such comments to respond to the Regional Administrator, who will take such comments into account prior to issuing a response to regulated persons, the public, Federal, Commonwealth and local agencies. In addition, the PREQB will be copied on all responses issued by the Regional Administrator.

The Regional Administrator may request and the Chairman shall submit information and provide access to all files necessary for oversight and evaluation of the PREQB's performance of functions described in this MOA.

EPA reserves the right to ask for and review information submitted to the PREQB which is claimed to be confidential by the submitter under Commonwealth law. EPA will preserve the claim of confidentiality in accordance with procedures established at 40 CFR Part 2.

If, in the judgment of the Regional Administrator, any performance of functions is inconsistent with the MOA or current Federal policies, regulations, or laws, he/she shall notify the PREQB and may take any actions specified in 40 CFR §35.150.

IV. State Notification of Program Changes

As soon as the Chairman has information concerning any substantial proposed or pending amendment, recision, or repeal of any pertinent statute, regulation, directive, significant judicial decision or form, any of which the Chairman has submitted to the Regional Administrator or agreed to make use of in connection with this MOA, the Chairman shall notify the Regional Administrator and transmit the text of any such change to the Regional Administrator. Within 30 days, the Regional Administrator shall determine whether the proposed change would restrict the authority of the PREQB to perform in accordance with this MOA. Such change may be cause for termination, according to 40 CFR §30.920, et seq., of the Cooperative Agreement negotiated pursuant to this MOA.

If an amendment, recision, or repeal of any statute, regulation, directive, form, or any significant judicial decision described in the preceding paragraph shall occur for any reason including action

by the Puerto Rico legislature or Commonwealth court, the Chairman will, within 10 days of such event, notify the Regional Administrator and will transmit a copy of such revision to the Regional Administrator.

V. Financial Assurance Responsibilities

EPA has reviewed Puerto Rico's hazardous waste regulations for equivalence with the Federal requirements for financial assurance of closure, post-closure care, and liability coverage. The Regional Administrator will accept an owner's or operator's use of the Commonwealth regulations for the Control of Hazardous and Non-Hazardous Solid Wastes Rules I 806 D, F, H of the Commonwealth's hazardous waste regulations in lieu of the Federal financial requirements of 40 CFR §§265.143, .145, and .147, pursuant to §265.149.

The Regional Administrator reserves the right to later withdraw approval of a PREQB mechanism on a case-by-case basis.

To ensure the availability of funds for closure and/or post-closure care, the Regional Administrator shall direct the PREQB to execute the provisions of the financial assurance mechanism and draw on the financial instrument when the Regional Administrator has determined that the PREQB has not taken appropriate actions in a timely manner.

VI. Compliance Monitoring

PREQB agrees to operate a timely and effective compliance monitoring system including sampling to assess and monitor compliance with facility standards and generator and transporter requirements as stated in the annual PREQB Work Program and PREQB/EPA Enforcement Agreement.

PREQB will monitor, evaluate, and take timely and appropriate action for violations of all reporting requirements by hazardous waste generators, transporters, and facilities under the PREQB program. This shall include a timely substantive review of such reports to determine the compliance status of persons filing the reports. Priorities for reviewing these reports will be specified in the annual PREQB Work Program. PREQB agrees to retain all records for at least three years unless there is an enforcement action pending. In that case, all records will be retained for at least three years or until such enforcement action is resolved, whichever is later.

PREQB agrees to carry out a program for monitoring the compliance by generators, transporters, and facilities with applicable program requirements (see 40 CFR 123.128). Compliance inspections will be done to ascertain whether a generator, transporter or facility is meeting manifest requirements, generator and transporter requirements, and facility interim status standards.

EPA may conduct compliance inspections including sampling of all hazardous waste generators, transporters, and facilities. Before conducting an inspection of a generator transporter or facility. the

Regional Administrator will notify the Chairman in accordance with the PREQB/EPA Enforcement Agreement. If the Chairman performs a PREQB compliance inspection and submits a report and data relevant thereto within that time² no EPA inspection will be made, unless the Regional Administrator deems the PREQB report and data to be inadequate. If the Regional Administrator does deem the PREQB report and data inadequate, he will specify any such inadequacies in writing at least seven days prior to the anticipated inspection date. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period. The parties agree to make available to each other as soon as possible, but no later than 30 days of their availability, any reports and data resulting from such inspections.

VII. Enforcement Actions

The PREQB agrees to take timely and appropriate enforcement action against persons in violation of generator and transporter standards (including manifest requirements), facility standards, compliance schedules, and all other program requirements in accordance with the provisions specified in the PREQB/EPA Enforcement Agreement. In instances where EPA determines that the PREQB has not initiated timely and appropriate enforcement action against a violator, EPA shall proceed with any or all of the enforcement options available under RCRA or any other applicable statute in accordance with the procedures set forth in the PREQB/EPA Enforcement Agreement.

PREQB and EPA agree that PREQB will take the enforcement lead with appropriate enforcement action against persons in violation of any PREQB program requirement, except for those cases in which there is agreement that EPA will take the enforcement lead. The PREQB will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public or any other source of information.

Appropriate Commonwealth enforcement response is defined in the PREQB/EPA Enforcement Agreement, and may include not more than two notices of violations (NOVs) for the same non-Class I violations followed by timely initiation and prosecution of enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial in nature. Any civil penalty assessed, sought, or agreed upon by the PREQB shall be appropriate to the violation, as defined in 40 CFR 271.16 (c). All enforcement actions will be conducted as per the PREQB/EPA Enforcement Agreement.

²Within that time period specified below in the last sentence of this paragraph.

The Regional Administrator may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008 (a) (2). EPA will take enforcement action in accordance with the provisions of the PREQB/EPA Enforcement Agreement. EPA will notify PREQB with respect to such action in accordance with the above Enforcement Agreement.

EPA will inform the Chairman in writing of any criminal enforcement action which has been filed by U.S. Attorney's Office. EPA shall provide the Chairman with written status reports every 90 days until such actions are resolved. The Commonwealth agrees to maintain the confidentiality of such information.

The Commonwealth agrees to provide EPA with copies of all documents it receives and to consult with EPA before it takes action pertaining to any generator, transporter or TSDf against whom EPA is pursuing an enforcement action. The PREQB and EPA agree that this consultation and coordination is important in the pursuit of a unified enforcement strategy and to avoid any unnecessary duplication of effort.

The Commonwealth agrees to use its enforcement discretion to assure that the Chairman and the Secretary of Justice's Office will:

1. Investigate and provide written responses to all citizen complaints duly submitted;
2. Not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule or regulation.

Either Agency may request the other to take independent or joint enforcement action on any case. Unless where there may be an imminent and substantial endangerment to human health or welfare or the environment, any such request shall be in writing and a response shall be given within 30 days of receipt.

VIII. Inspection Authority

Until it receives Final Authorization, PREQB will employ both its own independent inspection authority and the direct Federal inspection authority available under RCRA 3007 (a).

During this period that PREQB exercises the RCRA 3007 (a) authority, if PREQB receives any report submitted by a generator, transporter, or hazardous waste management facility with the claim of confidentiality, PREQB shall within 30 days obtain a copy of the report pursuant to RCRA 3007 (a). The copy of the report so obtained will be unencumbered by Commonwealth confidentiality protection and will be protected pursuant to RCRA 3007 (b).

IX. Effective Date

Unless otherwise stipulated, this MOA and any subsequent modifications will take effect immediately upon being signed by the Chairman and the Regional Administrator.

X. Amendments

This MOA may be amended or modified by mutual written agreement signed by both the Chairman and the Regional Administrator.

XI. Termination

This MOA will terminate when the State receives final authorization according to the provisions of 40 CFR Part 271, Subpart A. It may also terminate at any time in accordance with 40 CFR §30.903, et seq.

Environmental Quality Board


Chairman

March 27, 1986
Date

U.S Environmental Protection Agency


Regional Administrator

MARCH 10, 1986
Date